

PLANNING COMMISSION
October 29, 2014
Meeting Minutes

The Planning Commission of Monroe County conducted a meeting on **Wednesday, October 29, 2014**, beginning at 10:01 a.m. at the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL by Gail Creech

PLANNING COMMISSION MEMBERS

William Wiatt, Chair	Present
Jeb Hale, Vice Chair	Present
Elizabeth Lustberg	Present
Ron Miller	Present
Denise Werling	Absent

STAFF

Townsley Schwab, Sr. Director of Planning and Environmental Resources	Present
Steve Williams, Assistant County Attorney	Present
John Wolfe, Planning Commission Counsel	Present
Mayte Santamaria, Assistant Director of Planning and Environmental Resources	Present
Joe Haberman, Planning & Development Review Manager	Present
Mike Roberts, Sr. Administrator, Environmental Resources	Present
Emily Schemper, Principal Planner	Present
Matt Coyle, Senior Planner	Present
Karl Bursa, Senior Planner	Present
Gail Creech, Planning Commission Coordinator	Present

COUNTY RESOLUTION 131-91 APPELLANT TO PROVIDE RECORD FOR APPEAL

County Resolution 131-92 was read into the record by Mr. Wolfe.

SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

Gail Creech confirmed receipt of all necessary paperwork.

SWEARING OF COUNTY STAFF

County staff members were sworn in by Mr. Wolfe.

CHANGES TO THE AGENDA

Ms. Creech stated the applicant of Item 1 is requesting a continuance to the November 19, 2014, meeting.

APPROVAL OF MINUTES

Motion: Vice Chair Hale made a motion to approve the minutes of the September 24, 2014, meeting. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

MEETING

Continued Item:

1.Oceanside Marina, 5948, 5950 and 5970 Peninsular Avenue, Stock Island, Mile Marker 5; 24930 Overseas Highway, Summerland Key, Mile Marker 25; 21585 Old State Road 4A, Cudjoe Key, Mile Marker 22; and 5176-5180 Suncrest Road, Stock Island, Mile Marker 5:

A request for approval of an Amendment to a Development Agreement between Monroe County, Florida; Summerland Palms Investors, LLC, Coco Palms Developers, LLC, Suncrest Investors, LLC, Singh Investors, LLC, and Oceanside Investors, LLC allowing the transfer of market-rate Residential Rate of Growth (ROGO) exemptions from sender sites at 24930 Overseas Highway, 21585 Old State Road 4A and 5671 MacDonald Avenue to a receiver site at 5950 Peninsula Avenue, in accordance with Monroe County Code Section 130-161.1. On the sender sites, the residential dwelling units in which the transferred market-rate ROGO exemptions are derived shall be converted to, or replaced with, affordable housing units. The Development Agreement also involves the redevelopment of 5948, 5950 and 5970 Peninsular Avenue, the receiver site, for the addition of up to 78 new, market-rate residential dwelling units, which may be used as vacation rentals, up to 17 new hotel rooms, a new restaurant with up to 150 seats, and other improvements related to the existing, partially-condominumized marina and accessory development. 22 existing, market-rate permanent units (under condominium ownership), a boat barn (under condominium ownership), marina slips (under condominium ownership) and ancillary/accessory buildings would be maintained. An existing boat barn/light industrial building would be demolished. The residential density, under maximum net density, would not exceed 100 total permanent residential units and 17 transient units. Not including accessory structures related to the residential uses, the nonresidential floor area would not exceed 40,000 square feet. Dockage owned by the developer would include 8 new slips, for a total of approximately 16 slips, of which at least 20% (3 slips) shall be reserved for commercial fishing vessels. New residential or nonresidential buildings shall not exceed 35 feet in height. Public access will be provided from 7:00 a.m. until dusk. The Development Agreement concerns properties located at 5948, 5950 and 5970 Peninsular Avenue, Stock Island (legally described as Block 46, Lots 30, 31 and ½ Lot 32, Block 60, portions of Lots 1, 2 and 3, Block 61, portions of Lots 1, 2 and 3, the abandoned portion of Peninsular Avenue lying between Block 46 and Block 60, the abandoned portion of Maloney Avenue lying between Blocks 60 and 61, McDonald's Plat, also described as parcel of land in Sections 26, 34, 35 and 36, Township 67 South and Range 25 East, having real estate #'s 00126210.000000, 00126220.000000, 00126230.000000, 00127420.000000 and 00127420.000100.), 24930 Overseas Highway, Summerland Key (legally described as Lot 55 and a portion of Lot 54, Summerland Yacht Harbor, having real estate #'s 00194741.000100, 00194741.000200, 00194741.000300, 00194741.000400, 00194741.000500, 00194741.000600, 00194741.000700, 00194741.000800, 00194741.000900, 00194741.001000, 00194741.001100, 00194741.001200, 00194741.001300, 00194741.001400, 00194741.001500,

00194741.001600, 00194741.001700, 00194741.001800, 0019471.001900, 00194741.002000, 00194741.002100 and 00194741.002200), 21585 Old State Road 4A, Cudjoe Key (legally described as Lot 30, Sacarma, having real estate #00174960.0000000), and 5176 Suncrest Road, Stock Island (legally described as Lots 27 and 28, Sun Krest, having real estate #00132680.0000000)
(File 2014-112)

Motion: Commission Lustberg made a motion to continue this item to the November 19, 2014, meeting. Vice Chair Hale seconded the motion. There was no opposition. The motion passed unanimously.

New Items:

Mr. Wolfe informed the Commissioners that Items 2 and 3 are related and, therefore, will be heard together. Separate votes will be needed on each item.

2. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY FUTURE LAND USE MAP FROM RESIDENTIAL LOW (RL) TO MIXED USE/COMMERCIAL (MC) FOR PROPERTY LOCATED AT 97770 AND 97702 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 98, DESCRIBED AS A PARCEL OF LAND IN SECTION 6, TOWNSHIP 62 SOUTH, RANGE 39 EAST, ISLAND OF KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00091000.000000 AND 00091020.000000, AS PROPOSED BY SEE THE SEA OF KEY LARGO, INC. AND COCONUT BAY OF KEY LARGO, INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR INCLUSION IN THE MONROE COUNTY COMPREHENSIVE PLAN AND FOR AMENDMENT TO THE FUTURE LAND USE MAP; PROVIDING FOR AN EFFECTIVE DATE.
(File 2014-081)

3. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE MONROE COUNTY LAND USE DISTRICT (ZONING) MAP FROM SUBURBAN RESIDENTIAL (SR) TO SUBURBAN COMMERCIAL (SC) FOR PROPERTY LOCATED AT 97770 AND 97702 OVERSEAS HIGHWAY, KEY LARGO, MILE MARKER 98, DESCRIBED AS A PARCEL OF LAND IN SECTION 6, TOWNSHIP 62 SOUTH, RANGE 39 EAST, ISLAND OF KEY LARGO, MONROE COUNTY, FLORIDA, HAVING REAL ESTATE NUMBERS 00091000.000000 AND 00091020.000000, AS PROPOSED BY SEE THE SEA OF KEY LARGO, INC. AND COCONUT BAY OF KEY LARGO, INC.; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR AMENDMENT TO THE LAND USE DISTRICT (ZONING) MAP; PROVIDING FOR AN EFFECTIVE DATE.
(File 2014-082)

(10:04 a.m.) Ms. Schemper presented the staff report. Ms. Schemper reported that this is a request by the applicant to amend both the FLUM and the zoning category for the property in order to eliminate a nonconforming use. This hotel/motel use currently has 21 rooms and is nonconforming to the FLUM designation, which is currently residential low. This property is nonconforming to the density and the use for the future land use category. The applicant is requesting to change the FLUM designation from residential low to mixed use/commercial, which would allow the hotel/motel use in the FLUM category. The current land use zoning designation is suburban residential, which does allow some transient residential use, but for the zoning to remain consistent with the FLUM a map amendment is needed for the zoning. The applicant is requesting to change this zoning designation from suburban residential to suburban commercial. The property is surrounded by suburban commercial and mixed use currently. The proposed map change and the current use is consistent with the surrounding area.

Ms. Schemper explained that there is a provision in the Planning Department's fee schedule that waives the fees for a FLUM and zoning map amendment if it can be demonstrated that it would resolve a nonconforming use. Planning staff in December 2013 addressed this in a letter of understanding (LOU) and detailed in that LOU that there is evidence indicating that the existing zoning and existing FLUM designations may have been assigned in error. The applicant does qualify for the fee exemption and their requested new designations would eliminate the nonconformity. The number of units on the site were not addressed in the LOU. The number of units can only be verified by a letter of development rights determination. The proposed FLUM amendment would result in an increase of 12 residential units, an increase to a potential maximum 33 transient rooms or spaces, and a potential increase of 19,000 nonresidential square feet. Comp plan Policy 101.4.20 requires mitigation for a FLUM amendment that results in an increase in allocated density. This map amendment would be subject to that policy, which the applicant would need to comply with prior to adoption by the BOCC. Ms. Schemper outlined the mitigation options. Ms. Schemper clarified for Commissioner Miller that this mitigation is predicated on an increase in residential density and not an increase in intensity.

Ms. Schemper further reported that staff did not find any problems with the proposed FLUM in terms of level of service. Staff found it was consistent with the comp plan, the Livable CommuniKeys Plan, Florida statute and the principles for guiding development. Ms. Schemper recommended approval of this map amendment provided compliance with Policy 101.4.20 is established prior to adoption by the BOCC. Staff has found the zoning amendment furthers the action item from the Livable CommuniKeys Plan to eliminate nonconforming uses and is consistent with the comp plan. Staff is using Criteria Item Number 3 for adopting an amendment to the land use district map: Data errors, including errors in mapping. Ms. Schemper recommended approval of the zoning map amendment contingent on the adoption of the accompanying FLUM amendment.

David deHaas, the applicant's agent, was sworn in by Mr. Wolfe. Mr. deHaas expressed his appreciation to staff for their work on this application. Mr. deHaas stated this is the appropriate change for this property. Mr. deHaas explained the policies now in effect require the applicant to purchase property and extinguish rights on that property to be able to have the density on the subject property. The applicant believes this is unfair. Mr. deHaas asked if the requirement of that purchase of additional property could be postponed until such time as the moratorium on

additional transient units is lifted. The Planning Commission will not lose track of any of this because, in order to do anything on this property, the applicant will have to come back and get a rights determination.

Chair Wiatt asked for public comment.

Andy Tobin, Esquire, representing Rock Harbor Club, a neighboring condominium, gave a history of how the inconsistencies with this parcel stem from the 1992 adoption of the comp plan. Mr. Tobin then stated that because the comp plan is supposed to drive the land development regulations, this property really is not inconsistent in terms of what the law is, which says zoning is supposed to follow the FLUM. Mr. Tobin believes the applicant's current use should therefore be recognized. Mr. Tobin stated the mitigation required is an unconstitutional exaction. Mr. Tobin asked the Commissioners to either defer this item, take no action on it, or deny it.

Fred Heiner, resident of Rock Harbor Club, was sworn in by Mr. Wolfe. Mr. Heiner stated the residents of Rock Harbor Club want to be on record that they are concerned with what goes on around them and want to be active in the process while being good neighbors and able to continue to enjoy the quietness of their property.

Chair Wiatt asked for further public comment. There was none. Public comment was closed.

Commissioner Miller asked staff to address Mr. Tobin's comments on Policy 101.4.20. Ms. Santamaria explained that right now the comp plan does include for the four residential categories that Monroe County shall adopt LDRs which shall allow any other nonresidential use that was listed as a permitted use in the LDRs that were in effect prior to the institution of the 2010 comp plan, which is the 1986 code, that has lawfully existed on such lands to develop, redevelop, reestablish or substantially improve. This was adopted in 2006 by the County. That same year the County also adopted code amendments which specifically cite to these policies in the residential zoning categories. At this point in time the comp plan does not allow transients in residential zoning as a use and is not provided in the density standards. For both the FLUM and the zoning staff found that there was an error potentially in the mapping of these properties, which is why this particular applicant is allowed to have the fee waiver. The SR zoning would not have allowed the 21 units the applicant has today.

Chair Wiatt asked staff to respond to the applicant's request to defer the mitigation. Ms. Santamaria clarified that the discouragement policy is mitigation for residential allocated density, the increase in the 12 residential units. The State, both the DCA and the Administration Commission, have asked the County to not allow increases. Staff came up with the current mitigation strategy to allow map amendments to move forward. Right now the adopted policy does not allow for the deferral the applicant is requesting. Commissioner Miller requested that Policy 101.4.20 be satisfied before this ordinance is voted on by the BOCC.

Mr. deHaas asked to address the Commissioners again. Mr. deHaas asked staff to explain currently how many transient units may be added to this property. Ms. Santamaria responded that because the property is nonconforming, no additional transient units can be added. There is

a moratorium on new allocations, but not on transferring in allocations. Ms. Santamaria clarified for Commissioner Lustberg that the applicant can continue to operate with no changes. Commissioner Lustberg commented that the applicant could hold off on this application and continue as is until they are at a point to increase the use on the property, but deferring the mitigation is not allowed in the code.

Motion: Commissioner Miller made a motion to recommend approval of Item 2 to the BOCC with staff's recommendations and with the added condition of satisfaction of Policy 101.4.20. Ms. Santamaria repeated that the mitigation is only required because of a request to increase residential allocated density. The other option is to transfer those transient units in from the subarea. **Vice Chair Hale seconded the motion. There was no opposition. The motion passed unanimously.**

Ms. Santamaria pointed out that the zoning is not subject to the discouragement policy, but it is contingent on the FLUM amendment becoming effective. Mr. Tobin asked to address the Commissioners again. Mr. Tobin suggested the Commission encourage staff to look at Policy 101.4.20 carefully and look for a way to provide protection for these property owners without additional exactions.

Chair Wiatt asked for further public comment. There was none. Public comment was closed.

Motion: Commissioner Lustberg made a motion to recommend approval of Item 3 to the BOCC contingent on the adoption of the FLUM amendment. Vice Chair Hale seconded the motion. There was no opposition. The motion passed unanimously.

4. Standard Marine Supply Corp, 5713 First Avenue, Stock Island, Approximate Mile Marker 5: A public hearing concerning a request for a Variance to the sign regulations. The requested variance is required for the development of two proposed wall-mounted signs with a maximum face area of 31.5 SF and 107.1 SF, respectively. The subject property is legally described as Block 34, Lots 11-15, Maloney Subdivision (Plat Book 1, Page 55) Stock Island, Monroe County, Florida, having real estate number 00124700.000000.
(File 2014-131)

(10:48 a.m.) Mr. Bursa presented the staff report. Mr. Bursa corrected the "107.1" square feet listed on Line 3 of the staff report to "138.6" square feet. Mr. Bursa showed a picture of the property with the zoning overlay. Mr. Bursa reported that the building has had a commercial use on it for approximately 54 years, but it is located in a URM-L land use district. After looking at information provided by the applicant and the historical use of the property, staff believes that the zoning category may have been assigned in error. Because of that, the applicant is restricted in the amount of square footage allowed on their sign as of right. The applicant is requesting a total of 170.1 square feet. Pictures of the existing building and existing sign were shown. Mr. Bursa stated the surrounding area consists of a substantial amount of commercial use. Staff recommends approval of the application as it stands.

Mr. Bursa explained to Commissioner Miller that if the subject property was in any other commercial zoning district they would be allowed up to 200 square feet of total signage. The requested variance would not change the community character.

Randy Burns, present on behalf of the applicant, was sworn in by Mr. Wolfe. Mr. Burns emphasized that the applicant is only asking for what they would be allowed to have had the zoning been correct on their property.

Chair Wiatt asked for public comment. There was none. Public comment was closed.

Motion: Vice Chair Hale made a motion to approve. Commissioner Miller seconded the motion. There was no opposition. The motion passed unanimously.

5. Stock Island Marina Village, 700 and 7009 Shrimp Road, Stock Island, mile marker 5: A public hearing concerning a request for an Amendment to a Major Conditional Use Permit. The requested approval is required for the development of a proposed mixed use marina, to include marina, commercial retail, office, light industrial and hotel uses. The subject property is described as a parcel of land in Section 35, Township 67 South, Range 25 East, Stock Island, Monroe County, Florida, currently having real estate numbers 00123720.000100, 00123720.000200 and 00123760.000200.
(File 2014-027)

(10:57 a.m.) Mr. Coyle presented the staff report. Mr. Coyle reported that this is an amendment to a major conditional use permit. This property is deemed to have that major conditional use because a marina has existed on this site since before 1986. Mr. Coyle described the property. Pictures of the property were shown. Mr. Coyle further reported that staff has found the application meets all requirements of the comp plan. Policy 101.4.5, which is very specific to property with maritime industries zoning and a mixed use/commercial FLUM, has requirements preserving working waterfront uses. The site plan indicates 35.38 percent of the site will be preserved for those uses. Over 20 percent of the wet slips will be preserved for working waterfront uses. The applicant will have to transfer up to 120 transient units to the property before starting construction of the hotel. There is some lawfully established NROGO available for this property. The proposed boat barn would require approximately 13,000 more square feet than they currently have. Because it is over 10,000 square feet, the applicant would have to go to the BOCC and get a reservation in the future before constructing the boat barn. Mr. Coyle explained that the live-aboard ordinance should be effective November 5, 2014, if not challenged. If and when that ordinance becomes effective, the applicant would be at 99.91 percent of their allowed density. A Level 3 traffic analysis for the property has been received. However, that traffic analysis did not cover all of the existing and proposed uses on the site. Consequently, there is a condition regarding that. Staff recommended approval of the major conditional use with conditions. Those conditions were then outlined in detail by Mr. Coyle.

Mr. Coyle pointed out to Chair Wiatt where the 55 commercial vessels would be moored. Chair Wiatt asked how the percentage of slips for water-related businesses was calculated. Mr. Coyle deferred to the applicant's presentation for that response. Commissioner Miller asked if the public access runs with the development agreement or the property. Mr. Haberman responded

that currently there is no required public access on this property because it is privately owned. As part of the major conditional use proposed there is a condition requiring public access. The conditional use is recorded and runs as long as the development is there as approved in the conditional use. There is also proposed on the site a restaurant and other business open to the general public that will provide some public access. Mr. Haberman added that the comp plan also requires public access.

Bart Smith, Esquire, was present on behalf of the applicant. Mr. Smith emphasized that the comp plan provides that transient uses on a property requires the preservation of 35 percent for working waterfront, 20 percent of the existing slips and 10 percent of any new slips be for commercial vessels, as well as the public access. The applicant will be encouraging people to come to this property. Mr. Smith clarified that the live-aboard ordinance has gone through all of the governmental reviews and is simply waiting for the appeal period to be completed. Mr. Smith explained that the traffic study was done including the businesses in the immediate area of the proposed development, but was only done considering the first of three phases. The update to the traffic report will include the next two phases, which is the second restaurant and the boat barn, and should be complete in a week-and-a-half. The traffic consultant has indicated there is no concern about the level of service. Mr. Smith stated the applicant accepts all of staff's conditions.

Mr. Smith then went through the site plan in more detail. The concept of the project is a fishing village, which will combine the new structures and the old. All of the buildings on site are going to remain. The slips for the commercial fishing vessels were again pointed out. The marina will be preserved and a fish house will be added. The landscape plan was shown. The proposed hotel is a hundred-unit hotel and has a restaurant and tiki bar. Mr. Smith stated that by opting for the transient use the comp plan policy automatically requires 35 percent be preserved for working waterfront, as well as 20 percent of the wet slips. If approved, the conditional use will run with the land.

Chair Wiatt noted that the existing Key West Engine Shop is not denoted on the site plan as working waterfront. Mr. Smith explained that an artists' workshop occupies 5,000 square feet of that building, which is not traditional working waterfront. Chair Wiatt questioned the 5,000 square feet number. Chair Wiatt pointed out that the engine repair shop can go away in the future since it is not being counted as working waterfront. Chair Wiatt then noted that all of the boardwalk in front of the hotel all the way around to the boat house is calculated in the working waterfront as well. Mr. Haberman addressed the fact that while that engine shop can be turned into something else in the future, it is being approved as a light industrial building and the applicant is at their density max, which will limit the occupancy of that building. Chair Wiatt countered that the building could also just be demo'd and turned into parking. Mr. Coyle noted that the applicant came in under their 5,000 cap for commercial retail at 3700 square feet, but they are at the density max. Chair Wiatt asked if the boardwalk shown extending out to the east is going to tie into another boardwalk of a future development. Mr. Smith denied that and explained that the comp plan requires a boardwalk along the entire property. Chair Wiatt expressed concern about the loading/unloading and fueling of the vessels in an area where the public has access and are participating in recreational activities. Mr. Smith believes precautions

can be made through good management for the public's safety. Mr. Haberman confirmed that the boardwalk is not tied into any other property.

Chair Wiatt voiced concern that traditional working waterfront is not being preserved, even though by code it meets the criteria. Commissioner Lustberg questions the ability to call the waterfront setback that is not able to be used for anything as the 35 percent protected area on the property. Mr. Haberman clarified that the shoreline setback area can be used for commercial fishing operations, but not be used for the building of principal structures. Mr. Smith believes the shoreline area next to a marina or commercial fishing fleet are very important to those uses. Ms. Santamaria clarified that Policy 101.4.5 includes recreational as well as commercial working waterfront uses. Mr. Haberman clarified for Commissioner Lustberg that the two land piers on the site plan are not counted as the 35 percent preserved area for working waterfront because those are over land, not over water.

Chair Wiatt asked for public comment. There was none. Public comment was closed.

Commissioner Lustberg asked Mr. Smith to explain the three different phases. Mr. Smith replied that the first phase includes the hotel, the tiki bar right next to the hotel and the fish house. Phase 2 is the tiki bar by the garden and that surrounding area. The third phase includes the boat barn. Mr. Haberman then clarified that the development agreement has already been approved and the Commission today is approving essentially the uses and the site plan today per the major conditional use. Commissioner Lustberg suggested adding part of the building occupied by Key West Engine Services and the land around that piece of the building, as well as the boat barn and the proposed parking areas for the boat barn, to the 35 percent preserved area for working waterfront. Mr. Haberman pointed out that a boat barn in and of itself is considered storage, not traditional working waterfront. Mr. Smith agreed to include the area associated with the engine shop. Commissioner Lustberg would like an additional protection added that the same square footage of the engine shop somewhere on the site with water access be preserved for marine industrial uses. Mr. Smith agreed to that suggestion. Mr. Haberman explained that each phase was specifically reviewed to ensure that each phase would stand on its own by the code. If the Commissioners are concerned that the boat barn can be turned into something else in the future, a condition can be crafted that they cannot change the boat barn into anything else without additional Planning Commission approval. Mr. Smith suggested that language read that 8,000 contiguous total square feet adjacent to the water be preserved for marine industrial uses and any change in use of the boat barn would require Planning Commission approval. Mr. Wolfe pointed out that any substantial modification is covered under Condition 9, but suggested adding "Any change of use of the boat barn shall be considered a substantial modification." Commissioner Lustberg further suggested that Slips 1 through 7, which are by the fish house, be preserved for commercial not-for-hire waterfront uses only.

Motion: Commissioner Lustberg made a motion to approve with staff's recommendations, including the additional recommendation regarding the boat barn in Condition Number 9 and including the two additional conditions for preserving Slips 1 through 7 and preserving the total 8,000 contiguous square feet adjacent to the water for marine industrial use. Vice Chair Hale seconded the motion. There was no opposition. The motion passed unanimously.

A recess was held from 12:12 p.m. to 12:27 p.m.

6.5700 Fourth Street, 5550 Fifth Avenue, and 6500 Front Street, Stock Island, Mile Marker

5: A request for approval of a Development Agreement between Monroe County, Florida; Roger Bernstein, as Trustee of the Benjamin Bernstein Trust B; and Joseph R. Rackman and Jeffrey W. Bolotin, as Trustees of the Island Trust Agreement, involving the redevelopment of the subject properties with marina uses, heavy and light industrial uses (including boat building repair and storage), commercial fishing uses (including the manufacture, assembly, repair, maintenance and storage of traps, nets and other fishing equipment), hotel uses, commercial retail uses (including a restaurant with up to 150 seats and a market), and accessory uses. The residential density, under maximum net density, would not exceed 125 transient residential units (in the form of hotel rooms). Not including accessory structures related to the transient residential uses, the nonresidential floor area would not exceed 40,000 square feet. At least 35 percent of the upland area of the properties shall be reserved for working waterfront and water dependent uses. At least 20 percent of the dockage shall be reserved for commercial fishing vessels. New residential or nonresidential buildings shall not exceed 35 feet in height. Public access will be allowed from 7:00 a.m. until dusk. The Development Agreement concerns properties located at 5700 Fourth Street and 5550 Fifth Avenue (legally described as a portion of Block 55, all of Block 56 and a portion (Lot 13) of Block 57, the vacated portion of Fifth Avenue per Resolution #28-1966, Maloney subdivision (also known as McDonald's Plat), Plat Book 1, Page 55, and adjacent bay bottom, having real estate #'s 00123770.000000, 00127250.000000, 00127280.000000, 00127290.000000 and 00127380.000000) and 6500 Front Street (legally described as a portion of Block 55, Maloney subdivision (also known as McDonald's Plat), Plat Book 1, Page 55, and adjacent bay bottom, having real estate #'s 00123600.000100). (File 2014-107)

(12:27 p.m.) Mr. Haberman presented the staff report. Mr. Haberman clarified that the DRC staff report was provided as the staff report because revisions of the agreements were pending. Those revisions have since been provided. Mr. Haberman also clarified that the advertisement as read was correct, but this item was initially proposed and advertised for DRC of 122 hotel rooms. The Planning Commission advertisement was for 125, which needs to be clarified by the applicant. Their density does allow for 125 hotel rooms. The second difference is initially this was advertised for 14,000 square feet of nonresidential area, which has been changed to up to 40,000 square feet. Details of the exact square footages and breakdowns of all the different uses has not been provided. The applicant is asking for this development agreement to lock the code in place, aggregate the two separate properties into one and provide a ten-year horizon to come in for the conditional use. Mr. Haberman then described what the revisions were in the staff report. The first pertains to the ownership disclosure. Staff will require that before this goes before the BOCC all the parties financially involved in ownership of the land will be listed. Second, there is a discrepancy in regard to the acreage which must be clarified, so staff has included at this point the more restrictive total on the density numbers. The wording of the agreement was corrected to clearly state the applicant could not build taller than 35 feet.

Chair Wiatt asked whether staff has a clear understanding of the current use of the property. Mr. Haberman stated for the most part it is a mixture of industrial uses and commercial fishing with

some storage. Based on the aerial photograph a good part of the property is vacant and used for sparse storage.

Bart Smith, Esquire, present on behalf of the applicant, explained that the purpose of this agreement is to link together two properties with different owners. The applicant will be coming back to the Planning Commission as one property for the conditional use with detailed plans. Mr. Smith asked the Commissioners to provide any feedback or questions they may have regarding the future conditional use.

Chair Wiatt asked for public comment. There was none. Public comment was closed.

Commissioner Lustberg asked whether the purpose of the development agreement is to allow for hotel units to be transferred onto the property. Mr. Haberman clarified that development agreements are required by code only in a few instances. In this and most other cases a development agreement is used to ensure that the code is not going to change for the applicant's next steps. This particular development agreement is not required. This agreement will lock the code in place for ten years. It also clearly aggregates the four or five uniquely identified parcels under two different ownerships as being a unified parcel for the purposes of development, which gives them an aggregated share of density throughout the property. Mr. Haberman clarified the development agreement would make sure that the code does not become more restrictive to them. Mr. Wolfe further clarified the development agreement helps the applicants start their planning, but in addition it is a protection of knowing what the requirements are in a big project with phased development. Mr. Haberman stated the applicants have made almost every revision staff has requested, but a survey is still needed that clearly shows the total amount of upland, which number will then be used to correct the numbers in the development agreement.

Commissioner Lustberg believes conceptually it makes sense to do the development agreement to put the two pieces of property together for purposes of developing everything as a whole, but questions ensuring the use of the current code nine years in the future when there is no application or plan currently submitted. Mr. Haberman explained that the development agreement anticipates the development would be completed within that ten years. Mr. Haberman stated the big regulations such as density and height will unlikely change. Commissioner Lustberg then asked why there would be a necessity to lock the rules in place if those regulations are not going to change. Mr. Wolfe noted that the purpose of the Florida statute with respect to development agreements is to allow people who are proposing significant developments to have the benefit of knowing that they can pursue it without the regulations changing during their development. Commissioner Miller reminded the Commission that the DEO does not believe Shrimp Road can handle this amount of development. Mr. Haberman pointed out that traffic on Stock Island is being looked at comprehensively. Mr. Smith noted that this property will have a completely different traffic pattern than the properties on Shrimp Road. Mr. Smith detailed the access points in this area. Chair Wiatt encouraged staff to stay abreast of the overall development for Stock Island. Mr. Haberman assured the Commission that the traffic studies done on Stock Island have to be comprehensive.

Ramon Rodriguez, resident of Stock Island, asked to address the Commission. Mr. Rodriguez was sworn in by Mr. Wolfe. Mr. Rodriguez stated he has owned property on Stock Island for 31

years and wants to see it grow. Mr. Rodriguez wants to see Stock Island cleaned up and wants to see the Stock Island businesses grow and provide wealth to the County. Commissioner Miller cautioned staff to plan for future developments on Stock Island as the current projects are developed.

Motion: Vice Chair Hale made a motion to approve. Commissioner Miller seconded the motion. The roll was called with the following results: Commissioner Lustberg, No; Vice Chair Hale, Yes; Commissioner Miller, Yes; and Chair Wiatt, Yes. The motion passed three to one.

7.Bay Point Park, Circle Drive East and Circle Drive West, Saddlebunch Keys, Mile Marker 15: A request for a variance of 40 feet to the required 50-foot non-shoreline setback on Circle Drive West, thus resulting in a 10-foot non-shoreline setback, and a variance of 49 feet to the required 50-foot non-shoreline setback on Circle Drive East, thus resulting in a 1-foot setback, in order to construct shade structures in the park. The subject property is legally described as Park, Bay Point Amended Plat (Plat Book 3, Page 75) Saddlebunch Keys, Monroe County, Florida, having real estate number 00159820.000000 and Block 2, Lots 13 – 20, Bay Point Amended Plat (Plat Book 3, Page 75) Saddlebunch Keys, Monroe County, Florida, having real estate numbers 00160060.000000, 00160070.000000, 0016080.000000, 00160090.000000, 00160100.000000, 00160110.000000, 00160120.000000, and 00160130.000000, respectively. (File 2014-140)

(1:04 p.m.) Mr. Bursa presented the staff report. Mr. Bursa reported that this is a request for a variance by Bay Point Park. Mr. Bursa explained that the parks and refuge zoning district has 50-foot setbacks. A variance is being requested for shade structures over existing playground equipment. A picture was shown of the site. This 1.84-acre park would lose in the neighborhood of 54 percent of its usable area if the setbacks are applied so restrictively. An added benefit of this variance is it will bring existing equipment and elements of the park into compliance with current setback regulations. The proposed site plan for the structures was shown. Staff recommended approval of the requested variance.

Barbara Mitchell of Mitchell Planning and Design was present on behalf of the applicant, Monroe County, to answer any questions.

Motion: Commissioner Miller made a motion for approval. Commissioner Lustberg seconded the motion. There was no opposition. The motion passed unanimously.

BOARD DISCUSSION

Commissioner Miller again voiced concern there are not adequate facilities to accommodate all of the proposed development on Stock Island. Ms. Santamaria mentioned when staff does map amendments or development approvals concurrency issues are considered. There is an LCD for Stock Island and that community has not voiced concerns to staff.

Commissioner Lustberg then asked to change the rules so that open space along the waterfront cannot be considered as 35 percent of the working waterfront. Chair Wiatt agreed. Ms.

Santamaria replied that staff can propose that policy change to the BOCC during the comp plan amendment. Ms. Santamaria pointed out that the BOCC specified the statute requiring staff to provide for recreational and commercial working waterfront. Ms. Santamaria informed the Commissioners that other policy changes proposed by the Planning Commission specific to this policy in terms of the ratios and the percentages the BOCC has not moved forward with.

Commissioner Miller asked for clarification on the issue of live-aboards. Mr. Haberman explained that the live-aboard amendment removed live-aboards from density calculations, although they are still considered development. The requirement was added that they had to be within a marina, as well as parking requirements and pump-out requirements. Ms. Santamaria clarified that the County does not regulate the vessels, only the slips and parking associated with the slips.

Mr. Haberman then informed the Commissioners that an application for a radio tower on Sugarloaf came in. Staff encouraged the applicant to have the community meeting in advance of the application. A few neighbors have been told the Planning Commission is the final decision-maker on the application and some of those neighbors have reached out to several BOCC members. Commissioner Lustberg commented that the Commissioners cannot answer any questions or comment about an application the Commissioners have not read.

Ms. Santamaria informed the Commissioners three DRC meetings have been held to go over the LDR updates. Staff hopes to bring that before the Planning Commission in February or March of next year. On October 7, 2014, staff was hoping to transmit the comp plan, but some significant issues came up and the BOCC continued that meeting to December 10, 2014, to specifically discuss height and offshore islands. Staff now intends to transmit the comp plan amendments in early January of 2015.

ADJOURNMENT

The Monroe County Planning Commissioner meeting was adjourned at 1:26 p.m.